

Michał Huzarski*

Michał Pyrz**

MARSHAL OF THE SEJM AS A CONSTITUTIONAL BODY OF THE STATE

Abstract

This article aims to examine more closely the functioning of the office of Marshal of the Sejm in Poland. Presented as one of the research methods namely, historical-legal, it aims to show the evolution of the office of the Marshal in Poland. The paper also presents the legal status of the Marshal of the Sejm, his functions, and the powers of Parliament. Owing to the large spectrum of the subject we chose only those issues that most clearly show the Marshal of the Sejm as a constitutional body.

Keywords

Marshal of the Sejm – the Parliament – the Sejm – constitutional body

* Michał Huzarski is preparing a doctoral thesis in the field of constitutional law. An employee of local self-government units; e-mail: michal.huzarski@onet.eu.

** Michał Pyrz – PhD student in the Department of Civil Procedure, Faculty of Law, Administration, and Economy, University of Wrocław; e-mail: michal.pyrz@gmail.com.

1. ORIGINS OF THE OFFICE OF THE MARSHAL. HISTORICAL VIEW

The Marshal of the Sejm in Poland is traditionally a single executive body of the Chamber and a constitutional body of the state. The origins of the institution of the Marshal are associated with the earliest history of Polish parliamentarianism. Although during its history the importance of this body and the position of the Marshal in the political system have changed, the position has always been endowed with high prestige and esteem, which sometimes also involved its holders¹. Since the beginning of the Polish Parliament, and hence the origin of the Marshal of the Sejm, its core competence was conducting sessions of the Chamber of Deputies. This was first codified in the Constitution of 3 May 1791. The legislator explicitly stated the Marshals tasks as conducting both Houses of Parliament combined. The Marshal represented the Chamber of Deputies externally. He was to guard rights and freedoms, appoint delegates to committees, and chair the committee on law regulation. He maintained order in the Chamber of Deputies – for this power he was equipped with the Marshal's Guard. The largest increase in the position of the Marshal dates back to the year 1792, when the four-year parliament granted him a number of powers through which he became (after the king) the second person in the country. Membership of the Guard of Laws or the ability to substitute ministers, as well as the authority to issue orders for government agencies accounted for the uniqueness of this office. The partition Sejm recalled all those entitlements². In times when the Republic of Poland was under the occupation authorities the Sejm, Senate, etc. ceased to exist. The invaders, in particular, the Austrians and Russians, created some counterparts as facades of parliaments, but in the opinion of virtually all historians these were more theatres, in which everyone played a predetermined role³. The Marshal watched over a predetermined agenda,

¹ M. Zubik, *Organizacja wewnętrzna Sejmu Rzeczypospolitej Polskiej* [*The Internal Organization of the Polish Sejm*], Warszawa 2003, p. 37.

² J. Bardach, *Historia powszechna państwa i prawa* [*History of State and Law*], Poznań 1979, p. 201.

³ See: J. Pietrzak, *Sejm RP. Tradycja i współczesność* [*Polish Sejm. Tradition and Contemporaneity*], Warszawa 1995, pp. 70-72; see also J. Bardach, *Sejm dawniej i dziś* [*Sejm Formerly and Nowadays*], Warszawa 1993, p. 189.

which first had to be approved by a representative of the invader. He approved laws prepared much earlier, which required only his signature. He was deprived of the Marshal's Guard, which was replaced by the invaders' military. In the event of any insubordination of the Chairman, he was threatened with imprisonment and in the most drastic cases, death. Later the Parliament was completely abolished and the functions of the previous Polish Parliament were taken over by the national parliaments of the invading countries. This period in the history of Poland and Europe was very turbulent. Europe was consumed by war, and the invaders formed a coalition against the forces of Napoleon Bonaparte. At the beginning of the XIX century Napoleon's army began to achieve many successes, and in 1806, with the help of the Polish Legions, they regained a part of Polish territory, which had been taken from the Republic by Prussia. In this area, in gratitude for the help of the Polish Legions for Napoleon armies, Napoleon Bonaparte created in 1807 the Duchy of Warsaw. It was to support French troops in the offensive against the Tsar of Russia. A two chamber parliament was created, and the first Chairman of the Sejm, whom I have already mentioned on the occasion of the four-year parliament, became Marshal Stanisław Małachowski. The office of the Marshal became once again one of the most important in the Duchy of Warsaw. For the first time quasi regales of procedure for the Sejm were adopted, based on the French model. The Marshal of the Sejm, empowered by the provisions of the new regulations, could impose financial penalties on undisciplined MPs. This aroused much controversy among MPs. Then, he was given the right to present opinions on actions and decisions taken by the Council of State. He could also under the rules stop the Sejm when, to quote, he saw no possibility of solving the case. The chambers rules of procedure ordered the Marshal the publication of the adopted legislation in the Log of Rights, after prior consultation with the king. With the defeat of Napoleon's army the Duchy of Warsaw ceased to exist on the maps of Europe at that time. One could say that the status quo from before the creation of the Duchy of Warsaw was preserved. In 1814 the Congress of Vienna was called, which was to create a new legal and government order in Europe. Under the terms of the Congress of Vienna the Kingdom of Poland was created, unfortunately, in my opinion and that of the majority of historians, under the patronage of Tsarist Russia.

Tsar Alexander I promised to make every effort to make the Poles feel as independence as possible. In 1815 Tsar Alexander I granted a Constitution to the Kingdom of Poland. It was to establish a two chamber parliament. It mentioned only, that it was “to be chaired by a deputy selected by the Tsar”. At this point I will risk the thesis that in fact the situation had not changed in any way, from the situation under Russian occupation. The November Uprising in 1830 completely interrupted the operation and functioning of Parliament. In 1832 the Organic Statute was introduced, which dissolved the parliament chamber (Sejm) and at the same time moved it to St. Petersburg. It is understandable that with this decision the office of Marshal had also been dissolved. After the regaining of independence by the Republic of Poland, the then government restored the status of the office. The Marshal became a single executive body of Parliament. The March Constitution stated that the mandate of the Marshal of the Sejm would continue after the dissolution of parliament until a new Parliament had been formed, and introduced an article that gave the Marshal the right to call a joint meeting of the two houses of Parliament and chair them. Under the provisions of the above constitution the Marshal became formally the Vice President of the Republic of Poland⁴. In later years the Marshal of the Sejm lost this position to the Marshal of the Senate. In 1923, legislation relating to the rules of procedure was introduced. It spoke about the representation of the Sejm by the Marshal of the Sejm, as well as safeguarding the dignity and rights of Parliament (the Sejm). In later years, the Marshal received, among others, the right to erase from the protocol any content that was in violation of the Constitution. In the interwar period, a special year for the office of the Marshal was 1935, when it was introduced into the Rules that the Marshal was granted the right to set up meetings and their agenda, as well as the competence that the Chairman cannot accept a bill proposal which would be incompatible with the Constitution. In addition to the rules, there appeared a provision specifying that the Marshal is an authority of the Sejm⁵. The strong position of the Marshal, in that period of Polish Parliamentarianism was to provide legal order; Poland had only started creating state structures and required

⁴ Bardach, *supra* note 3, p. 189.

⁵ Pietrzak, *supra* note 3, pp. 77-79.

rapid and decisive legislative work. Both in the April and the March Constitutions the Marshal was meant to ensure the continuous work of parliament and the legislature. He was also to unite around parliament the often conflicting political parties, as well as support the government of that time. During the Second World War 1939-1945 legislative power was divided between the President of the Republic of Poland and the Polish government in exile. The British government did not agree to the establishment of a Polish parliament-in-exile in London. The main reason mentioned was the lack of an appropriate number of politicians that might form it, and the lack of funds for maintaining such a large body as the Parliament. The work of the Legislative Sejm in 1947 developed a statement that determined the Marshal as one of the organs of the Sejm. According to the small constitution of 1947 the Marshal of the Sejm was part of the State Council and would replace the President if he could no longer fulfill the office. The Marshal was also obliged to immediately convene Parliament if the President did not exercise authority for 3 months, and introduce into Parliament a resolution as to whether to consider the Office as vacant⁶. This constitution restored the principle that the mandate of the Marshal of the Sejm lasted until a new Marshal was appointed. The Marshal watched over parliamentary proceedings and directed the work of Parliament. He could exclude members of Parliament from a meeting if they refused to submit to the rules of procedure which were similar to those in force before the outbreak of World War II. Although part of the rules that distinguished the Marshal from other bodies of Parliament were preserved, and by that I mean the right to correction or deletion of points from the protocol, or representation outside the Parliament, the seriousness and standing of the office of the Marshal clearly decreased. An example would be the reduction of employees in the Office of the Sejm as well as Secretaries of Parliament. The Constitution of 1952 gave the Marshal the position of a constitutional body and at the same time stated that the Marshal, or in his absence the Deputy Marshal, conducts meetings and supervises the works of the Sejm. Such legal status did not last long; in November 1952 the regulations of Parliament lowered the rank of the

⁶ Ibidem, pp. 70-72.

Marshal. The Chairman of the Chamber of Deputies ceased to be a body of the Sejm giving this attribute to the Presidium of the Sejm. The permitted functions of the Marshal were determined as fairly simple: he notified the deputies, the Council of State, and the government about the date and agenda of meetings of the Sejm. The Marshal could also accept bill proposals and parliamentary questions, lead plenary sessions, and as well, in relation to the deputies, he could prolong their speeches and apply disciplinary penalties⁷ to them. Most of the existing powers of the Marshal were taken over by the Presidium of the Sejm, a member of which, and also its chairman, was the Marshal of the Sejm. A small extension of the prerogatives of the Marshal took place in 1972, when the record of substituting by the Chairman of the Sejm in case of the absence of the Chairman of the State Council, was restored. That year also a decree was promulgated on the salary and retirement benefits for people holding the highest positions in the state apparatus, where the Marshal was placed after the Chairman and the Council of State and before the President of the Council of Ministers⁸. The Marshal also received the right to appoint and dismiss the vice-presidents of the Supreme Chamber of Control, the deputy Ombudsman, to take the oath of members of the Constitutional Tribunal, and judges' pledges from members of the State Tribunal. Subsequent changes in the rules of the Sejm were introduced in the year 1980. The powers of the Marshal of the Sejm were broadened. He could in fact appoint a member of the government to a relevant parliamentary committee to present an opinion. The Prime Minister could accept the request of the Chairman, but it was not a mandatory obligation. In 1986 the statutory right of the Marshal of the Sejm was reinstated to order the deletion from the shorthand report of meeting phrases insulting the seriousness of the Sejm or contrary to the oath of Deputies.

The Four-Year Sejm in 1791 gave the Marshal of the Chamber of Deputies the right to convene a prepared Parliament, when the King could not or was not able to summon the chamber and, when Parliament had to resolve a dispute between the King and the then quasi government –

⁷ Bardach, *supra* note 3, p. 213.

⁸ J. Bardach, *Dzieje Sejmu Polskiego* [*The History of the Polish Sejm*], Warszawa 1993, p. 248.

the Guard of Rights⁹. The Primate lost this entitlement to the Marshal of the Chamber of Deputies. In Reborn Poland the Marshal lost the above competence to the Head of State (1919), and the President of the Republic of Poland. This was declared in the Constitutions of March 1921 and April 1935. Selecting the Marshal of the Chamber of Deputies was the first undertaking of the Chamber of Deputies. In the presence of the King, MPs unanimously had to choose a Marshal. If they could not reach a consensus as to a person, they had to vote until the consent of all members present in the hall was obtained. This principle of selection has been replaced since the mid-seventeenth century. It was established then that the majority of the valid votes amounted to a decision, unless unanimity was reached¹⁰. This change greatly simplified and accelerated the parliamentary work of the time. In time of King Sigismund Augustus the principal office terms were adopted – which in practice meant that every Parliament meeting was chaired by another regional council representative. His first election had to be from among the Members from Wielkopolska, Małopolska, and Lithuania, and during each Parliament from a different province. The Four-Year Sejm in 1791 maintained the custom of selecting the Marshal of the Chamber of Deputies with a majority of votes. On this occasion, it is worth mentioning that for the first time voting ballots were introduced. Some modifications to the content and design of the card were introduced by the Grodno Sejm of 1793. During the Duchy of Warsaw and the Polish Kingdom the Marshals of the Chamber of Deputies were appointed by the Monarch. Tsar Nicholas II introduced the rule, which gave the Marshal the power to preside in only one session of Parliament. After the outbreak of the November Uprising the Chamber of Deputies elected a Marshal itself, and he chaired parliamentary sessions until they ended¹¹. In Poland after independence until 1923 the Marshal was elected from among the members by majority vote. For the legitimacy of choice, a quorum of 100 deputies was required, and since 1921, 1/3 of the total statutory number of deputies. In 1923 a resolution was passed, which introduced

⁹ W. Czapliński, *Dzieje Sejmu Polskiego do roku 1939* [*The History of the Polish Sejm to 1939*], Kraków 1984, p. 23.

¹⁰ M. Wreda, *Sejm i dawna Rzeczpospolita* [*The Sejm and the Former Republic*], Warszawa 2011, p. 48.

¹¹ *Ibidem*, p. 51.

a rule that for the validity of the elections of the Marshal of the Sejm an absolute majority of valid votes is required. It is also worth noting that since 1923 the voting has been secret. Subsequent changes in the selection of the Marshal were brought in by the year 1935. Rules restricting the choice of the Marshal only from among candidates submitted earlier were introduced. Subsequent changes have not been implemented owing to the outbreak of World War II. At the Legislative Sejm in 1947 elections of the Marshal were to be held under the provisions of 1923, but the authorities of that time violated this provision and, in opposition to MPs from the Polish Peasant Party, conducted the election by acclamation. The work of the Legislative Sejm allowed the creation of rules for the procedure of the Sejm, in which the form and manner of holding elections for the Marshal were exactly defined. It should be mentioned here that the achievements of the legislative Parliament from the interwar period have been used. The Marshal of the Sejm was to be chosen by an absolute majority of votes in the presence of at least half of the statutory number of deputies from among candidates nominated in advance in written form. The regulations introduced the requirement that the application must be signed by not less than 30 members. Elections in open voting have been sanctioned. Since 1952 the Marshal's election always took place in an open vote. Most of the statutory provisions of 1948 are still in force today. An important date for the election of the Marshal was 1991, when the Marshal was elected from among several candidates in a roll-call written vote, the ballot contained the names of the candidates, and the choice was made by deleting the eliminated candidates¹². I will present the current form and mode of selecting the Marshal later in my work.

2. THE LEGAL STATUS OF THE MARSHAL OF THE SEJM. THE CHOICE OF THE MARSHAL OF THE SEJM

In the modern Sejm there are no established political procedures as to the election of the function of Marshal. In the PRL, for this position an MP belonging to the formation ZSL was elected. In Poland after 1990 a tendency

¹² Pietrzak, *supra* note 3, pp. 64-66.

can be observed to treat the office of the Marshal of the Sejm as an activity closely linked to the implementation of already established coalition agreements or a looser agreement on creating a joint government¹³. Adoption of the choice is a right, not a duty of the Marshal-elect. Before taking office the newly elected President of the Chamber delivers a speech in which he makes a declaration and gives a promise of an objective and impartial management of sessions. The choice of the Marshal is of key importance from the point of view of the constitution of the Chamber, and therefore a situation in which it will have the ability to exercise its constitutional competences. Neither the Constitution nor the Rules of Procedure of the Sejm impose specific requirements for candidates standing for the seat of Marshal.

Without a doubt, the Rules of Procedure and the Basic Laws raise two issues. In accordance with Article 110 paragraph 1 of the Constitution, the Marshal is to be elected by Parliament from among its members. This article leaves no doubt as to the fact that the Marshal of the Sejm can only be chosen from MPs performing their mandate in a given term in the lower house, where he will be holding the office of Marshal and perform all the duties reserved for him¹⁴. Another condition for the selection of the Marshal is the fact that it can take place only after the deputies are sworn in. To confirm the validity of my words I will present the regulation of Article 104 paragraph 2, which explicitly provides that prior to the beginning of their mandate Members shall make the following oath before the Sejm. With this type of formulation is not possible to suggest, for the position, a candidate who has not made vows and given support to such a proposal by a MP before making his vows. To the duties of a Senior Marshal is to keep such requests from voting, as they are accompanied by a formal error¹⁵. As I already mentioned, the Sejm elects the Marshal of the chamber which is stated in the Basic Law. This form of regulation provides a basis to derive from Article 110 paragraph 1 the principle of the

¹³ P. Czarny, B. Naleziński, *Organy Sejmu Rzeczypospolitej Polskiej* [The Authorities of the Republic of Polish Sejm], Warszawa 2002, p. 40.

¹⁴ W. Skrzydło, *Komentarz do Konstytucji Rzeczypospolitej Polskiej* [Commentary on the Constitution of the Polish Republic], Kraków 2002, p. 156.

¹⁵ P. Winczorek, *Komentarz do Konstytucji RP* [Commentary on the Constitution of the Republic of Poland], Warszawa 2001, p. 182.

presumption of the exercising of the tasks of Marshal for the entire term of office. In the doctrine of constitutional law, this principle causes many objections because it would suggest that all circumstances giving rise to recalling a deputy from the post of Marshal should be treated as an exception to the rule. The Marshal of the Sejm is elected during a plenary session by the entire chamber. Candidates for Marshal may be proposed by a group of at least 15 deputies, which is constituted in the rules of procedure of the Sejm, but the rules also limit the opportunity to express support for candidates by providing that each MP may support only one candidate for the post of Marshal. This regulation is to limit the number of proposed candidates. The rules of procedure do not contain any provisions relating to the form of presentation of candidatures for the post of the Marshal of the Sejm¹⁶. It is customary that the candidate's application is made in written form; the request is then presented to the Marshal Senior. The legal nature of the application does not take the form of a resolution as to the way of its proceeding. Here the following legal structure has been accepted, whereby the plebiscite for the Marshal of the chamber is conducted by way of what is known as a resulting resolution, in the sense of a resolution by the Chamber taken by vote and not acts. In order to enable the submission of nominations, a break in the meeting is administered. In modern practice, the parliamentary break ordered by the Marshal Senior is only of a courteous nature. Normally such proposals are prepared before the first meeting of the newly elected chamber. Rather, no candidate seeks the support of 15 deputies in the parliamentary session break. The provision of Article 4 of the Rules of Procedure of Parliament state that the election of the Marshal should be made by a roll-call vote. However, it mentioned that the Chamber may in this case decide otherwise. I refer to the replacement of ballot boxes by a device for counting votes, which makes the choice much simpler. Today, this method has definitely replaced the principle mentioned in the Rules of procedure. The results of the voting are announced by the Marshal Senior. They are final and cannot be discussed, nor can a repetition of voting be conducted, as is constituted by art. 188 of the Rules of Procedure of the Sejm. It is

¹⁶ Zubik, *supra* note 1, p. 53.

worth noting that when using a device to count the votes, the repetition of the voting, mentioned above, has actually no application. An important element is also the rule that the lower house of Parliament elects its President by an absolute majority of votes. Although we shall not find any explicit provision indicating the absolute majority requirement, the request of a quorum in the form of at least half of the statutory number of deputies is indicated by Article 120 of the Constitution and the Rules of Procedure of Parliament Article 190. The electoral procedure continues until one candidate has received the required number of votes¹⁷. In a situation in which only one candidate is nominated, the voting takes place only for that candidate. The terms of the Rules of procedure do not provide an automatic selection. They do, however, open the possibility of voting on only one candidate. When more than one candidate is proposed a list of candidates is usually prepared in alphabetical order. In the event that no candidate receives the required majority, another election is carried out, provided however that the candidate with the lowest result¹⁸ is deleted from the list. If in the above situation no Marshal is selected, the whole procedure including the reporting of candidates starts from the beginning. Particularly noteworthy is the circumstance referred to in Article 4 paragraph 3 of the Rules of Procedure of the Sejm, which does not settle a situation when the deputies elect the Marshal from two candidates and both receive an equal number of votes¹⁹. If as a result of the procedures contained in the rules of the Sejm one of the candidates or a candidate obtains an absolute majority of votes, he is elected Marshal at the time the Senior Marshal announces the result of the voting and announces the selection of a candidate as Marshal. The publication of the resolution in this case has only a constitutive character.

Disputed in the jurisprudence is the question of the admissibility of the premature recalling of the Marshal during the term. On this regulation jointly both the Constitution and Sejm Regulations are silent. Most supporters of the doctrine present the view that the re-election of the

¹⁷ Skrzydło, *supra* note 14, p. 173.

¹⁸ Czarny, Naleziński, *supra* note 13, p. 40.

¹⁹ Act of the Sejm of the Republic of Poland from 30.07.1992 Rules of Procedure of the Sejm of the Republic of Poland, *Monitor Polski* [Polish Monitor] 1992, no. 26, item 185.

Marshal during the term should be conducted in a manner identical to that which takes place at the beginning of a term. Further discussion on this issue I will present in next parts of my work.

3. CONSTITUTIONAL RESPONSIBILITIES OF THE MARSHAL OF THE SEJM

In the Polish legal system, constitutional responsibility can be applied to persons holding the highest posts in the country. The Constitution provides that sanctions can be used when the one of the persons occupying an office when performing their duties violates the Basic Law or other laws. The Polish legislator has introduced a principle according to which Parliament decides whether to put the accused before the Tribunal of State²⁰. To assess the scope of the constitutional responsibility of the Marshal of the Sejm it is an important issue that the Marshal's office relates to all the rights and obligations granted to an MP as well as to all the restrictions and prohibitions arising from the exercising of a parliamentary mandate. The Office of the Marshal has an inherent legal specificity, consisting in the fact that while being a deputy, in the full sense of the word, he holds a position to which the legislator has given the special character of state authority. The legislator has separated the powers that the Marshal performs only on behalf of his title indicating him as an independent organ of the State, from those powers which are due to his carrying out his mandate as a deputy. There is no doubt that the deputy performing the tasks of Marshal refers to the concept of a free mandate and thus he remains a representative of the People and thus he cannot be bound only by Voting Instructions²¹. Such a statement is formulated in Article 104 section 1 of the Constitution. The Constitution is silent on the responsibility before the State Tribunal of the Marshal of the Sejm. The Basic Law in its Article 198 exhaustively lists a catalogue of state bodies which are responsible to the constitution. The doctrine presents the view that this is a purposeful act made by lawmakers. This issue leads

²⁰ B. Banaszak, *Polskie prawo konstytucyjne [Polish Constitutional Law]*, Warszawa 2008, p. 489.

²¹ K. Grajewski, *Status prawny posła i senatora [The Legal Status of a Deputy and Senator]*, Warszawa 2002, p. 93.

to a question about the role of the Marshal of the Sejm in paragraph 2 of the above article, which provides that parliamentarians may be held responsible to the State Tribunal. As I mentioned the Marshal is entitled to all the rights and has all the duties of an MP. One could draw the presumption that, based on that, the President of the Chamber can be held constitutionally responsible if he commits a violation of the constitution. This theory, in most, is not confirmed by the intention of the legislator. Most constitutionalists present a view close to the one presented by Professor M. Zubik. He represents the view that the legislator by deliberately not placing the Marshal of the Sejm in Article 198 excludes him from the jurisdiction of the Tribunal of State²². Parliamentary practice shows that in a situation when the Marshal violates the provisions relating to constitutional responsibility, one is to expect that Parliament will first dismiss the person concerned from the post of President of the Parliament and next start the procedure to hold him accountable before the Tribunal of State.

In the Polish state system, although there is one doubtful matter, in which the Chairman of the Chamber may be held accountable before the Tribunal of State, as the Marshal of the Sejm, the referred circumstance may occur when the President of the Republic is temporarily unable to exercise authority and is temporarily replaced by the Marshal of the Sejm, as well as after the death of the President of the Republic of Poland, resignation from office by the President, as well as the cancellation of the election of the President of the Republic of Poland, or other reasons for not assuming that office following the election, or recognition by the National Assembly of the President's permanent incapacity to exercise his duties due to ill health²³. The above described cases are regulated by Article 131a of the Constitution. Such a possibility is provided for in Article 2 paragraph 3 of the Law on the State Tribunal, which addresses the responsibility of the Marshal of the Sejm for carrying out the responsibilities of the President of the Republic of Poland²⁴. It refers to constitutional torts and crimes

²² Zubik, *supra* note 1, p. 62.

²³ *Ibidem*, p. 65.

²⁴ Cf. the Constitution of the Republic of Poland from 2.04.1997, *Dziennik Ustaw* [Journal of Laws] 1997, No. 78, item 483.

committed while temporarily performing the duties of the President. On the other hand a similar argument is raised concerning the removal from office of the Marshal of the Sejm while he is acting as substitute for the President of the Republic by the National Assembly, at the time when he had committed an offence, along with the repealing of his parliamentary immunity. In the majority of voices occurring in this matter, referring to the constitutional responsibility of the President of the Republic of Poland transferred to the President of the Lower House who is temporarily performing Presidential duties would be a manifestation of the existence of immunity in a place where the legislature clearly did not foresee it. This would ultimately lead to the violation of a number of constitutional principles: legality, the rule of law, and the democratic rules of state²⁵.

4. SOCIAL AND LIVING EMPOWERMENTS

The earnings of the Marshal of the Sejm have a legal basis in the Act on the remuneration of persons occupying managerial positions in the state. The Marshal's quota is determined on the basis of the amount of the base, the value of which is contained in the Budget Act. The multipliers of the base amount should also be counted. These are determined in the regulation of the President of the Republic of Poland, the generally accepted multiplier value of 6.2 and the multiplier of the basic amount of functional supplement is 2.0²⁶. In general, the earnings of the Marshal will consist of the supplement for the number of years of work in government offices, in the amount, after five years, of 5% of the monthly basic salary. This supplement increases by 1% for each subsequent year of work until it reaches 20% of the monthly basic salary which is regulated by Article 22 of the Law on Employees in State Offices²⁷. Periodically, the sum of the components may also be increased by an anniversary bonus which is stated in Article 23 of the same Act. The nature of the work

²⁵ Czarny, Naleziński, *supra* note 13, p. 44.

²⁶ Ordinance of the President of the Republic of Poland from 25.01.2002 on the remuneration of persons occupying managerial positions in the state, *Dziennik Ustaw* [Journal of Laws] No. 10, item 91.

²⁷ Act from 16.09.1982 on employees of state offices, *Dziennik Ustaw* [Journal of Laws] No. 86, item 953 with amendments.

performed by the Marshal is associated with various types of trips that require accommodation, travel expenses, and meals, and these are reimbursed on the basis of Article 26 of the Law on state employees²⁸. The Marshal can receive a reward from the parliamentary bonus fund, on terms specified by the board of the fund in separate acts. It seems a strange fact that part of the legal norms contained in the Act for Members and Senators does not apply by analogy to MPs, in relation to the President of the Chamber of Deputies²⁹. According to this he loses certain benefits, including additions to salaries, the lack of the right to unpaid leave – although this is understandable because of the President’s position, and the lack of a deputy’s salary. The Marshal will not be able to return to the work he did before taking office, or he will lack work experience for the period in which he remained in office as Marshal³⁰. To the Marshal of the Sejm as recipient the provisions of Article 28 of the Act apply, relating to those who are Members of Parliament and Senators, and give the right to benefits in case of accidents during tenure as deputy. According to the legislator, the Chairman of the Chamber will also receive an additional salary at the end of the calendar year as well as becoming authorised to receive a one-time severance package equal to three months’ salary when he retires and a one-time Parliament severance when moving to drawing pension³¹.

Characteristic for any workplace, because in some way the Sejm is a workplace, the Marshal and his family members can benefit from the social fund. The Act relating to Members of Parliament and Senators also provides free transport in Poland using public transport as well as air travel and free public transit using public transport which is constituted in Article 44. The Marshal of the Sejm, with his salary will be bound by the provisions of the Law on the remuneration of persons occupying managerial positions in the state. The legal scope of this Act extends to all MPs and their families in terms of health benefits. Such a provision formulated in Article 5a means that the Marshal and his family can benefit

²⁸ Ibidem.

²⁹ Grajewski, *supra* note 21, p. 57.

³⁰ Act from 6.05.1996 on exercising the mandate of Members of Parliament and Senators, *Dziennik Ustaw* [Journal of Laws] 2011, No. 7, item 29 with amendments (uniformed text).

³¹ Ibidem.

from free health services³². The legislator distinguishes the Marshal from among persons holding the highest posts in the country with special privileges, namely with the right to obtain accommodation to meet his housing needs, as well as the representative needs for the duration of his tenure. It is worth mentioning that, in contrast to the deputies and senators, the Marshal receives this right regardless of whether he has other housing in Warsaw³³. On the subject of the salaries and wages of politicians a debate continues relentlessly, both on legal and political grounds. One cannot forget, however, that the Marshal of the Sejm is “the second person in the country”, who represents the entire Chamber both in the country and beyond its borders. He should receive remuneration and benefits that sufficiently provide him the best opportunities to represent Poland. Therefore, I believe that the current social and living benefits of the Marshal of the Polish Sejm allow him, appropriately to his rank, to perform his functions.

5. PROTECTION FLOWING FROM IMMUNITIES

Immunity should be understood as a legal institution, under which a person benefiting from it is not subject to specific regulations, with which other people are required to comply. Immunity can also mean limiting the legal liability of a person performing a particular function. The essence of the immunity is therefore the exemption from a specific duty³⁴. Polish Constitutional Law distinguishes between two types of immunity: material and formal. The Marshal of the Sejm has both of them.

An MP acquires immunity at time of announcement of the election results, and loses it when his mandate expires, but until that time he cannot, without the permission of the Chamber which in he sits, be held to have incurred criminal liability. Such a solution is regulated by Article 105 paragraph 2 of the Constitution³⁵. “The Chairman of the

³² Grajewski, *supra* note 21, p. 57.

³³ Zubik, *supra* note 1, p. 80.

³⁴ Banaszak, *supra* note 20, p. 407.

³⁵ The Constitution of the Republic of Poland from 2.04.1997, *Dziennik Ustaw* [Journal of Laws] 1997, No. 78, item 483.

Chamber of Deputies cannot be held accountable for his activity performed within the scope of a Deputy's mandate either during it or after it expires. This is owing to material immunity. It seems that protection flowing from this immunity applies to the office-holder's activities as a deputy as well as Marshal, being an internal organ of the chamber"³⁶. Performing the duties of the Marshal is a unique form of the mandate, and so one should look at the office of Marshal from the point of view of material immunity. Matters seem to be problematic concerning the exercising of powers outside Parliament, and whether to treat them like the other organs of State, since for the majority of representatives of the doctrine these activities do not constitute parliamentary immunity. In the above case, the Marshal benefits from the protection of the formal immunity. If a situation is encountered in which criminal proceedings are brought against an MP, who is in a group from which the Marshal is to be elected, before his choice for deputy, it can take place even after he accepts the mandate - this thesis has been confirmed by the Constitutional Tribunal in its judgment³⁷. Under the provision of Article 105 section 3 the Sejm may, however, require the suspension of such proceedings until the expiry of an MP's mandate, but legislature reserves the right to require the form of a resolution of such a decision of the Sejm³⁸. The Basic Law gives an MP the opportunity to make a declaration of intent to be brought to criminal responsibility, in which case there is a specific resignation of immunity protection flowing from the case³⁹. According to most representatives of the doctrine, these regulations apply fully to the President of the Chamber of Deputies. The Basic Law provides protection for MPs, meaning that a Parliament member may not be detained or arrested without the approval of his Chamber. The Marshal of the Sejm also has this privilege. An exceptional situation, which negates the above statement, will be when an MP is caught with another subject, that detention is necessary for the proper conduction

³⁶ Zubik, *supra* note 1, p. 56.

³⁷ Cf. Sentence of the Constitutional Tribunal from 28.11.2001, K 36/01, *Orzecznictwo Trybunału Konstytucyjnego* [Decisions of Constitutional Tribunal; OTK] 2001, no. 8, p. 1325.

³⁸ Cf. the Constitution of the Republic of Poland from 2.04.1997, *Dziennik Ustaw* [Journal of Laws] 1997, No. 78, item 483.

³⁹ M. Zubik, *Immunitet parlamentarny w nowej konstytucji* [Parliamentary Immunity in the New Constitution], *Państwo i Prawo* [State and Law] 1997, no. 9, p. 19.

of criminal proceedings. The authority conducting the proceedings should immediately communicate this fact to the Marshal of the Sejm⁴⁰ – the Constitution thus regulates this in Article 105 paragraph 5. From the beginning of the situation the question arises, who should be notified in cases where law enforcement agencies apprehended stopped the Marshal of the Sejm in flagrante delicto. Both the Constitution and the Rules of the Sejm are silent on this issue, although in the literature most often one of the Vice-Marshals is mentioned. In the light of the applicable regulations as of today, law enforcement could, in the situation that I have described above, arrest the President of Chamber of Deputies⁴¹.

The Marshal of the Sejm, of which office I wrote earlier, is considered among the persons occupying the highest positions in the State. It is unsurprising that the legislator included providing him with receiving a diplomatic passport, as well as with the protection provided for state dignitaries by the Government Protection Bureau. As the Chairman of the Chamber of Deputies has the status of “second person in the State”, such protection takes place on similar rules as for the President of the Republic⁴². The legal basis for the protection of the Marshal by the Government Protection Bureau will be Article 2 section 1 point 1 which introduces the following provision: “The tasks of the Bureau are to protect 1) the President of the Polish Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, the Deputy Prime Minister, the Minister responsible for internal affairs, and the Minister of foreign affairs”⁴³.

Starting considerations for replacement of the Marshal of the Sejm in his absence, must be emphasised that it applies only to the replacement of the Marshal in the exercising of his powers, and not in the possibility of realisation of his personal rights or obligations, eg. an MP. These rights belong to him as a person and not as a State Body or Body of the Chamber. The issue of representation of the Marshal of the Sejm is regulated both in the constitution and rules of procedure. In the Polish legal system, there

⁴⁰ Winczorek, supra note 15, p. 198.

⁴¹ Zubik, supra note 39, p. 21.

⁴² Zubik, supra note 1, p. 81.

⁴³ Act from 16.03.2001 on the Government Protection Bureau, Dziennik Ustaw [Journal of Laws] 2001, No. 27, item 298.

is no provision under which it would be possible to deduce the presumption of exercising the representation of the Marshal in the performance of all of his powers⁴⁴. I will begin by discussing the issues of the constitutional representation of the Marshal. In the Constitution there are provisions for the necessary taking over of certain functions of the Marshal of the Sejm. On the basis of Article 131a paragraph 3 of the Constitution, in a situation when the Marshal cannot perform the duties of President in place of the head of state, these obligations are to be taken over by the Marshal of the Senate⁴⁵. Also on the basis of the Constitution, the Marshal of the Senate in place of the Marshal of the Sejm chairs the National Assembly, as is regulated by Article 114 paragraph 1 of the Constitution. This legal form is necessary owing to the fact that the Marshal of the Senate is not in a limited subordination with respect to the Marshal of the Sejm and the Sejm itself⁴⁶. The autonomy of the Marshal of the Senate makes him impartial and not burdened with political pressure, in acting as a replacement for the Marshal of the Sejm. In both cases the control regulations of the Sejm would not be sufficient. The doctrine disputes the terminology related to the replacement of the Marshal of the Sejm. The acquisition of responsibilities and representation in both of the above cases provides the Marshal with completely different powers. It is further argued that, as a result of substituting in chairing the National Assembly, the Marshal of the Senate performs the duties of Marshal of the Sejm, and not his own. The dominant view is that all the rights and duties of the Marshal of the Sejm in temporarily performing the duties of Head of State on the basis of Article 131 paragraph 3 of the Constitution should be applied accordingly to the Marshal of the Senate⁴⁷.

The situation appears otherwise of replacing the Marshal of the Sejm in his inter-parliamentary competence as well as those competences which are intended to implement the constitutional competence of the Sejm. For that matter, the Rules of Procedure of the Sejm may constitute a sufficient basis to determine ways of replacing the Marshal of the Sejm. A key issue

⁴⁴ Zubik, *supra* note 1, p. 180.

⁴⁵ Cf. the Constitution of the Republic of Poland from 2.04.1997, *Dziennik Ustaw* [Journal of Laws] 1997, No. 78, item 483.

⁴⁶ Zubik, *supra* note 1, p. 181.

⁴⁷ Czarny, Naleziński, *supra* note 13, p. 47.

for the replacement of the Chairman of the Chamber seems to be the norm contained in Article 10b of the Rules of Procedure of the Sejm, which states that in the event of the death or resignation from office of the Marshal of the Sejm he is to be replaced by the oldest of the Vice-Marshals. Sequentially paragraph 3 of the above article regulates that the Marshal of the Sejm is replaced by the Vice Marshals to the extent specified by the Marshal⁴⁸. This norm means that the Vice Marshals do not perform these functions within their powers, but, on the basis of a legal fiction, perform them in place of the Marshal of the Sejm. Another provision dealing with issues about the replacement of the Marshal is Article 178 of the Rules of Procedure of the Sejm, which gives the power to direct parliamentary proceedings in place of the Marshal. One should take this opportunity to mention that, in practice, the parliamentary representation of the Marshal of the Sejm during a meeting has become a parliamentary custom. In fact, the Marshal of the Sejm chairs only the most important points of a meeting, from the point of view of both politics and deliberations which have the greatest legal significance: by that I mean important votes on laws of interest to the media. But back to the issues related to the replacement of the Marshal of the Sejm in the performance of his inter-parliamentary duties. The Marshal determines the scope of his replacement by an individual Vice Marshal of the Chamber. An important issue is the fact that the scope cannot be the same for all Vice Marshals. The Rules of Procedure of the Sejm are addressed to the eldest Vice Marshal, but lawyers do not see obstacles in the way of the replacement coming from so-called “political anointing”⁴⁹. This would mean in practice that the Marshal recommends his replacement by a Vice Marshal from a specific political option to which he belongs or belonged⁵⁰. The Marshal however, cannot reduce the competence of the Vice Marshal of the Sejm in chairing a meeting as a substitute.

A crucial requirement for the position of the Marshal of the Sejm, both as a State body and single internal executive body of the chamber, is

⁴⁸ Act of the Sejm of the Republic of Poland from 30.07.1992 Rules of Procedure of the Sejm of the Republic of Poland, Monitor Polski [Polish Monitor] 1992, no. 26, item 185.

⁴⁹ A. Szmyt, *Legalność działania w zastępstwie Marszałka Sejmu [The Legality of the Action in Place of Marshal of the Sejm]*, Warszawa 2010, p. 184.

⁵⁰ Zubik, supra note 1, p. 185.

a precise definition of performing the activities of the Marshal in his absence⁵¹. Transparency and clarity of legal norms in this area will mean that, if a substitution becomes necessary, the whole procedure will be launched very quickly and this consequently will increase the durability of the law.

6. THE MARSHAL AS AN ORGAN OF THE CHAMBER. THE INTERNAL FUNCTION

The Marshal of the Sejm is primarily an organ of the chamber. The correct way of directing the work of Parliament affects the image of the entire chamber. Among the most important elements of the internal functions of the Chairman we can include: chairing the Chamber, organising its rights, guarding and inspiring the work of the Sejm, as well as chairing other bodies of the Sejm. The Marshal has the constitutional right to direct the sessions of the chamber. The Chairman of the Chamber both opens and closes Parliamentary debates. The Rules of Procedure of the Sejm give the Marshal a special right to admonish deputies, and give them commands with which they must comply. The Marshal of the Sejm may also allow or prohibit entrance to the meeting room⁵². The norm contained in Article 50 of the Rules of Procedure of the Sejm gives the Marshal the right to refuse to put to a vote a bill that has not been previously submitted to the competent committee in written form. Such a provision in the rules of Parliament causes many disputes in the doctrine of constitutional law, because this is considered a sign of infringement of the principle of the rule of law. Most important, from the point of view of debates in the Sejm, is to set the agenda of a meeting of the chamber. The Rules of Procedure demand that the Marshal consults the Council of Seniors in this case. This is laid down by the rule contained in Article 171, paragraph 2 of the Rules of Procedure. The same article sets the limits that mark the time for the Marshal for consultations to 7 days before the meeting of the Sejm. Apart from the agenda or in connection with the discussion the Marshal gives the

⁵¹ Ibidem, p. 180.

⁵² Zubik, supra note 1, p. 149.

floor to the President' on his request, MPs to submit a formal application, for dementi of a misunderstood speaker, as well as to deliver statements by the deputies⁵³. Requests to supplement the agenda can be submitted to the Marshal by circles, clubs, and groups of at least 15 MPs; required for this action is a written form filed no later than 12 hours before the start of a meeting. Article 175 of the Rules of Procedure entitles the Marshal to the right to forbid an MP, who talks off topic from speaking. If a member behaves in a reprehensible manner or once again speaks not about, not adhering to orders given by the Marshal, thus making it impossible to conduct the meeting, then in accordance with the Rules of Procedure, the President of the Chamber is entitled to exclude the MP from the meeting⁵⁴. From this decision of the Marshal, the Deputy may appeal to the Presidium of the Sejm. It is worth noting that such exclusion applies only to a particular sitting of the Sejm. The use of the Marshal's Guard for this purpose could be problematic, owing to the principle of the autonomy of the Chamber as well as the status of the MP – as the representative of the nation. Most representatives of the doctrine accept that possibility⁵⁵. The Marshal of the Sejm is obliged to place his signature on the minutes of the meeting of the Parliament and can also agree to publish transcripts of parliamentary meetings⁵⁶.

The Marshal of the Sejm by law has a number of powers of initiating the legislative procedure, sometimes on an exclusive basis. It is worth mentioning that at this moment the Marshal becomes the embodiment of the entire chamber, as a project filed in his Chancellery will be treated as a submission to the Sejm⁵⁷. Bills and resolutions must be submitted to the Marshal of the Sejm in written form as is regulated by the Rules of Procedure. Then the Marshal administers the printing of the design and the delivery of the print to the MPs. In justified cases, the Chairman of the Chamber may demand a justification of the project. The Marshal controls

⁵³ B. Banaszak, R. Balicki, *Opinia Biura Analiz Sejmowych dot. Kompetencji Marszałka Sejmowi w zakresie ustalenia porządku obrad* [Opinion of the Office of Sejm Analyses Concerning Competence Marshal of the Sejm in Determining the Agenda], Warszawa 2010, p. 194.

⁵⁴ Act of the Sejm of the Republic of Poland from 30.07.1992 Rules of Procedure of the Sejm of the Republic of Poland, *Monitor Polski* [Polish Monitor] 1992, no. 26, item 185.

⁵⁵ Zubik, *supra* note 1, p. 62.

⁵⁶ Czarny, Naleziński, *supra* note 13, p. 38.

⁵⁷ Zubik, *supra* note 1, p. 163.

the project formally. The Chairman of the Chamber is entitled to return the applicant's project if it would be incompatible with the Polish Constitution, which is regulated by Article 118 paragraph 3⁵⁸, as well as when the project was submitted by an entity that does not have competence in this field. In case of doubts as to the compatibility of the project with the Law, the Marshal after consulting the Presidium of the Sejm may refer the project to the Legislative Committee⁵⁹. The Marshal after starting work on a project is obligated to decide what title the project will hold, e.g. a code or a law⁶⁰. Next, the Marshal directs a draft resolution or bill for the first reading. At the request of the President of the Chamber, an MP sitting as a member of the committee responsible for processing the draft, reports before the High Chamber on the work on the project in the Sejm⁶¹. The Basic Law and other laws give the Marshal the right to present a request of appointment for a person to state office. The request must be submitted to a relevant parliamentary committee for a review of the application. The Marshal of the Sejm is also entitled to adopt a proposal for a vote of no-confidence both for the Council of Ministers and a single Minister: this is regulated by Article 116 of the Rules of Procedure of the Sejm⁶².

The Constitution imposes on the Marshal of the Sejm the duty of guarding the rules of the Sejm. This statement of the constitution can be seen in two ways. First, it may relate to safeguarding the rights contained in the Constitution as well as ensuring respect for the constitutional position of the Chamber and its powers by other authorities and in particular by the executive⁶³. The doctrine considers both of these aspects. However, from the point of view of the Rules of Procedure of the Sejm Article 9, the Marshal is to uphold the rights and dignity of the Chamber. I would also classify under this aspect the monitoring of the course of the work and the bodies of the Sejm. It should be noted that the Chamber

⁵⁸ Cf. the Constitution of the Republic of Poland from 2.04.1997, Dziennik Ustaw [Journal of Laws] 1997, No. 78, item 483.

⁵⁹ Czarny, Naleziński, *supra* note 13, p. 45.

⁶⁰ Zubik, *supra* note 1, p. 166.

⁶¹ J. Mordwiłko, *Interpretacja art. 175 Regulaminu Sejmu [Interpretation of Art. 175 Regulation of Sejm]*, Warszawa 2010, p. 419.

⁶² Act of the Sejm of the Republic of Poland from 30.07.1992 Rules of Procedure of the Sejm of the Republic of Poland, Monitor Polski [Polish Monitor] 1992, no. 26, item 185.

⁶³ Czarny, Naleziński, *supra* note 13, p. 42.

should remain a place of harmonised rules based on seriousness and order. In fact, from the phrase “guarding the rules” it is not possible to specify the competence of the Marshal in this regard, it only highlights the special dimension of the institution of Marshal⁶⁴. One cannot miss the fact that this phrase requires the Marshal to exercise his powers and functions within the limits allowed by law. This fact is also confirmed by the Marshal being a public authority⁶⁵.

7. REPRESENTATION OF THE SEJM

Representation refers to the a special relationship between at least two entities, meaning a representative of one entity and a second entity being represented. It also means advocacy on behalf of, and activities which by law are attributed to the entity represented. Both the Constitution and the Rules of Procedure of the Sejm delegate the task of representing it outside to the President of the Chamber. This task of the Marshal is controversial both in case law and doctrine. The statement “representing the Parliament outside” must be considered in its two meanings⁶⁶. The first narrower, relating to procedural law, it is to rely on the fact that all acts signed by the President of the Chamber authentically come from the Sejm⁶⁷. The second and much wider will become the subject of my further analysis. The Marshal of the Sejm symbolises and embodies the Sejm during state ceremonies, which according to some representatives of the doctrine create his role in a symbolic dimension. “The Marshal delivers the opinion on an act signed by the President of the Republic, bypassing the legislation considered by the Constitutional Tribunal to be incompatible with the Basic Law, which is inseparably connected with the whole bill, or returns it to the Sejm to remove the inconsistencies (Article 122 paragraph 4 of the Constitution)”⁶⁸. The Sejm regulations assume that when the President of the Republic of Poland asks the President of the Chamber to express his thoughts in the form of an opinion, he in turn, submits the matter to

⁶⁴ Zubik, *supra* note 1, p. 86.

⁶⁵ *Ibidem*, p. 87.

⁶⁶ M. Chmaj, *Polskie prawo konstytucyjne [Polish Constitutional Law]*, Warszawa 2008, p. 456.

⁶⁷ *Ibidem*, p. 158.

⁶⁸ Czarny, Naleziński, *supra* note 13, p. 44.

the relevant body, in this case the commission, which examined it before the adoption of the bill by the Sejm. In every similar case, there should be a committee to present the Marshal with its opinion. Article 10 paragraph 3 of the Rules of Procedure of the Sejm clearly shows that the Marshal does not act in such a situation himself or at his own discretion, but as a representative of the entire chamber⁶⁹. The role of Marshal has a representative character, although this should not be understood as strictly executive and therefore it would be wrong to understand this in such a manner, that the Marshal must provide or submit his opinion to the opinions of the majority of MPs. Nothing could be further from the truth. The Marshal may, for example present the President of the Republic and the President of the Polish National Bank with his own opinion not in line with the general view of most members⁷⁰. This does not mean that the Marshal cannot consider or even reckon with the opinion of deputy clubs, deputy circles, or even individual MPs. Occupying his position he should be primarily focused on the welfare of the country as well as defending the rights of Parliament. The Constitution grants the President of the Chamber the right to make an application to the Constitutional Tribunal to decide on jurisdictional disputes between the constitutional organs of the State. Having been granted a legal attribute the Marshal should not conclude that he himself is one of the central constitutional organs of the state: such a character is without any doubt the Sejm. In other words, it is to be understood as a special kind of activity of the Marshal on behalf of the entire chamber as well as to protect its rights. Despite the fact of taking an independent decision by the Marshal to apply to the Constitutional Tribunal, he should do so as a representative of the Parliament in defense of its threatened or violated rights. At the same time it is not completely ruled out that the Marshal asks the Constitutional Tribunal in case of a dispute concerning powers granted him by the constitution assuming theoretically with e.g. the Marshal of the Senate whether who is entitled

⁶⁹ Act of the Sejm of the Republic of Poland from 30.07.1992 Rules of Procedure of the Sejm of the Republic of Poland, Monitor Polski [Polish Monitor] 1992, no. 26, item 185.

⁷⁰ L. Garlicki, *Prawo konstytucyjne. Zarys wykładu* [Constitutional Law. Outline of the Lecture], Warszawa 2003, p. 473.

to substitute the President of the Republic of Poland in a particular situation⁷¹.

The Chairman of the Chamber is in contact on its behalf with other state bodies. Applications, letters and all kinds of questions of administrative bodies, usually directed to the entire chamber, are submitted directly to him. The Marshal also with his own signature signs all letters on behalf of Parliament as well as those which go outside. One cannot forget that the Marshal of the Sejm represents the Sejm both in private-legal and judicial proceedings in this field.

8. THE ADMINISTRATIVE AND ORDINAL FUNCTION

The administrative and ordinal function is directly related to the management of the area and building belonging to Parliament. The Rules of Procedure commit the Marshal to administer peace and order throughout the territory belonging to Parliament, and at the same time authorise him to issue appropriate orders. The purpose of these regulations is to ensure proper working conditions in the Sejm. Although Parliament's terrain is not excluded from the application of laws and other legal acts, it is traditionally considered that it should be free from interference from the subsidiary bodies of executive power, by which I mean all kinds of services and in particular the police⁷². It is a kind of autonomy of Parliament, which is to eliminate the influence on Parliament of bodies and departments that it is meant to control. Orders despite the fact that they are issued on the basis of the Rules of Procedure of the Sejm, and not the law – should be considered acts of force by not only MPs and employees of the Chancellery of the Sejm, but also by all persons within the premises of the Sejm⁷³. The function of ensuring safety and public order in Parliament is performed by the Chairman of the Chamber with the help of the specialised body which is the Marshal's Guard.

⁷¹ Czarny, Naleziński, *supra* note 13, p. 46.

⁷² Zubik, *supra* note 1, p. 88.

⁷³ Czarny, Naleziński, *supra* note 13, p. 49.

9. AREAS OF AUTHORITY OF THE MARSHAL OF THE SEJM

The Basic Law of 2 April 1997 granted the President of the Chamber a new, previously unknown competence, to present proposals to the Constitutional Tribunal. It is worth mentioning that such a possibility is granted to a group of 50 deputies and 30 senators. It aims to carry out an abstract review of the norms of constitutional law. The Marshal of the Sejm may also submit a request to the Constitutional Tribunal to examine the compatibility with the Basic Law of the purposes or activities of political parties. The Chairman of the Chamber may also make a request that a question of competence between the central constitutional organs of the State be settled. The Basic Law in no way restricts the legitimacy of including in this area as one of these bodies the Sejm or the Marshal of the Sejm. The literature presents the view that the Marshal should with great political and legal restraint use the powers given to him in Article 192 of the Constitution⁷⁴. When a dispute does not concern the sphere of the legislature, Parliament or any other sphere which could affect the interests of the Chamber, the Marshal should not engage in it. Each application will be a manifestation of the discretion of the Marshal as he remains closely associated with the person of the Chairman of the Chamber. This includes all kinds of consequences of a process nature. Filing a motion takes place on the general principles laid down in the same way for each group of bodies referred to in Article 192. On the basis of Article 31 paragraph 2 of the Law on the Constitutional Tribunal, the applicant – in this case the Marshal, may withdraw the proposal until the start of the case⁷⁵. The doctrine represents the view that with the dismissal from office as well as expiry of the term of the Sejm the request expires. In the case of matters of significant social importance further legal steps are decided on by the Constitutional Tribunal. Under the provisions of Article 29 paragraph 2 a process proxy has been introduced. When the Marshal submits a request to the Constitutional Tribunal, he is represented by a deputy appointed

⁷⁴ Zubik, *supra* note 1, p. 110.

⁷⁵ Act from 1.08.1997 on the Constitutional Tribunal, *Dziennik Ustaw* [Journal of Laws] No. 102, item 643 with amendments.

as representative⁷⁶, and he may also assign his representatives, who may not be more than three. The provisions of the Act do not specify who these should be. By this I mean that they do not have to carry out a parliamentary mandate. An exception to this rule will be the situation when the Marshal submits an application for a declaration about obstacles to the exercising of office by the President – the above law imposes on him a personal hearing at the tribunal meeting.

Another extra-parliamentary competence of the Marshal of the Sejm is presiding over the National Assembly. The doctrine has long disputed what kind of body the National Assembly should be considered. Is it a separate state body or perhaps a collegial body composed of two constitutional bodies⁷⁷. According to Article 114 of the Constitution, the detailed powers of the Marshal of the Sejm should be specified in the Rules of Procedure of the National Assembly. In the current legal system, the fairly enigmatic Rules of the National Assembly have been in operation since the year 2000. They are not concrete about the tasks and competences of the Marshal in relation to presiding over the National Assembly. In the case of the National Assembly there remains only the legitimacy of a constitutional nature. A problem related to competence appears, namely as to who should convene the National Assembly in order to adopt its regulations. According to P. Sarnecki constitutional conditions create such a possibility for the convening of the National Assembly in particular, to receive the oath by the newly elected President of Poland, the recognition of permanent incapacity of the head of state to hold office, or putting him on trial before the State Tribunal, and also to hear the proclamation of the President of Poland, in which the Basic Law provides the possibility and necessity of convening the National Assembly⁷⁸. According to M. Zubik it is not permitted to use the rules of the Sejm and the Senate in matters of internal organisation and the agenda of the National Assembly⁷⁹. Despite the many unsettled regulatory issues related to the organisation and functioning of the National Assembly one should not forget that the

⁷⁶ Ibidem.

⁷⁷ P. Sarnecki, *Sejm a Senat i Zgromadzenie Narodowe [The Sejm and the Senat and the National Assembly]*, Warszawa 2002, p. 89.

⁷⁸ Ibidem, p. 94.

⁷⁹ Zubik, *supra* note 1, p. 113.

legislator distinguished the Marshal of the Sejm out of many constitutional bodies, giving him the power to preside over the proceedings of the National Assembly.

Another extra-parliamentary function of the Marshal of the Sejm is to order the elections for the President of the Republic of Poland. Under the provisions of Article 128 paragraph 2 of the Constitution, the Chairman of the Lower House of the Parliament has the duty of ordering the election for the office of President of the Republic. The Basic Law does not indicate a concrete time frame in which to issue a decree on the presidential elections, if they fall in the normal expiration time of the term, whereas the Constitution strictly indicates the date in the case of vacancy of the office. The Marshal of the Sejm then has 14 days from learning this fact, for calling presidential elections. In the case of the expiry of the term of office, it is the period falling between the hundredth and seventy-fifth day before the expiry of the five year term⁸⁰. In the case of vacancy in the office, this period is cut down to sixty days. The Marshal issues the presidential election in the form of a decision, which in turn is to be published in the Log of Rights. He specifies in this document, in addition to indicating the election date after consulting the National Electoral Commission – the election calendar. Along with the setting by the Marshal of the election date, there begins, in the legal sense, the election campaign. These procedures are anchored in the normative act of 27 September 1990 on the Election of the President of the Republic of Poland. The tasks of the Marshal are associated with conducting the election of the President of the Republic of Poland, and also the ordering of the second vote of the elections, in a situation where none of the candidates running for the presidential office receives more than fifty percent support⁸¹.

Another, this time mandatory competence of the Marshal of the Sejm will be to institute a nationwide referendum. To better understand this competence of the Marshal one should outline the normative background from which this competence derives. In Article 235 section 6 of the Constitution it is provided that, for a circumstance of adoption of a bill

⁸⁰ Cf. the Constitution of the Republic of Poland from 2.04.1997, Dziennik Ustaw [Journal of Laws] 1997, No. 78, item 483.

⁸¹ Zubik, *supra* note 1, p. 94.

to amend the Constitution, which introduces amendments to the provisions of Chapters I, II, or XII, which may be subject to a nationwide referendum. If the authorised entities ask within a constitutional deadline of forty-five days, demanding a referendum, the Marshal must immediately order a referendum by issuing an appropriate decision on this matter as regulated by Article 77 section 3 of the Act on the Nationwide Referendum⁸². The vote is to be held within sixty days from the date of submission of an application – and this is a constitutional term. As a general rule a referendum should fall on a day free from work so that every citizen has the opportunity to vote. With the time of announcing the date of the referendum begins the so-called referendum campaign, which is set to end twenty-four hours before the voting begins. The change in the constitution will be approved if the this Act receives a majority of voters, as written in Article 235, paragraph 6 sentence 3 of the Constitution⁸³.

The extra-parliamentary functions of the Marshal of the Sejm include temporarily performing the duties of the President of the Republic of Poland. The Basic Law imposes a number of regulations associated with the situation when it becomes necessary to temporarily replace the holder of the position of head of state, when he cannot exercise his office, and when he is to be prosecuted before the State Tribunal⁸⁴. The Constitution foresees various kinds of obstacles that can prevent the President of the Republic from exercising his office. The first is the suspension of office by the President. The time of suspension starts at the moment of adoption by the National Assembly of a resolution to indict the President of the Republic. The promulgation of the resolution is declaratory and consequent. The statement by the Marshal of the Sejm as the Chairman of the National Assembly, that a resolution in this matter has been taken, has the legal effect of the temporary acquisition by the Marshal of the Sejm of performance of the duties of the President. The duration of the state prosecution is a period in which the Marshal replaces the President of the Republic. The term is calculated until the expiry of a five-year term of office

⁸² Act from 14.03.1989 on the State Referendum, *Dziennik Ustaw* [Journal of Laws] No. 167, item 299.

⁸³ Cf. the Constitution of the Republic of Poland from 2.04.1997, *Dziennik Ustaw* [Journal of Laws] 1997, No. 78, item 483.

⁸⁴ *Ibidem*.

of the President of the Republic of Poland. The facts as to what kind of proceedings to take if the person prosecuted has been chosen later for a second term have not been regulated. The next obstacle will be barriers of a legal nature. They cause the permanent impossibility of the exercising of the presidency by a specific person⁸⁵. In Article 131 paragraph 2 item 3 of the Constitution outlined is the premise, if an incident in these conditions occurs, the term may not start at all or is to be immediately shortened. The Basic Law mentions an exhaustive list of reasons, with which the Constitution entails the impossibility of holding office. Article 131a paragraph 2 lists: the death of the President of the Republic of Poland, the renunciation of office by the President, invalidation the election of the President of the Republic of Poland or other reasons for not assuming office following the election, the recognition by the National Assembly of the permanent incapacity of the President of the Republic of Poland to hold office due to the state of health, in the form of a resolution adopted by a majority of at least 2/3 votes of the statutory number of members of the National Assembly and the submission of taking the President of the Republic from office by judgment of the State Tribunal⁸⁶. It is worth noting that among them are both actions and legal events. The general rule is that all the conditions listed above are irrevocable, which in the Basic Law involves a situation of nullifying the position of head of state⁸⁷. The third kind of obstacles mentioned are the so-called actual events caused by various circumstances which cause the President of the Republic to be unable for some time to exercise his office⁸⁸. The Basic Law lacks concretisation of the statement inability of exercising office by the President. It must be therefore assumed that all types of situations with an objective impossibility of holding office by the President of the Republic may be accepted if they are short-termed, and when they are solvable in a reasonable time⁸⁹. The Marshal of the Sejm has a narrower margin of appreciation of

⁸⁵ Zubik, *supra* note 1, p. 94.

⁸⁶ Cf. the Constitution of the Republic of Poland from 2.04.1997, *Dziennik Ustaw* [Journal of Laws] 1997, No. 78, item 483.

⁸⁷ Winczorek, *supra* note 15, p. 145.

⁸⁸ P. Sarnecki, *Prezydent Rzeczypospolitej Polskiej. Komentarz do przepisów* [President of the Republic of Poland. Comment to Provisions], Kraków 2000, p. 48.

⁸⁹ Zubik, *supra* note 1, p. 103.

similar circumstances in contrast to the President of the Republic of Poland. The Marshal of the Sejm taking over the duties of President of the Republic is obliged to fulfil the formal requirements. These include submission of an application by the chairman of the lower house to the Constitutional Tribunal to declare the obstacles in the exercise of the office of President of the Republic. On the basis of Article 26 paragraph 2 of the Law on the Constitutional Tribunal it is to immediately proceed with the case in the composition of at least nine judges⁹⁰. At the hearing, beside the Marshal, who has to attend in person, there must attend the Marshal of the Senate, the First President of the Supreme Court, and the Attorney General⁹¹. The Marshal temporarily performing the duties of the President of the Republic of Poland in principle takes over all his rights and obligations. Exceptions in this respect are established in the basic law which is regulated in Article 131 paragraph 4, namely the power to shorten the term of the Sejm⁹². One must remember, however, that the Marshal does not become president, because he has no electoral legitimacy for doing so. In the case of a temporary impossibility of holding office, the solution of the obstacle causes the President of the Chamber from that moment, to perform no longer the duties of the President of Poland, the basic Law does not require in this case any legal action which would cause the re-transfer of all rights and obligations to the temporarily replaced President of Poland⁹³. According to representatives of the doctrine, because of the certainty of the law, the President of the Republic of Poland returning to office should notify the Marshal of the Sejm and give this information to the public.

The last extra-parliamentary function of the Marshal of the Sejm to be discussed by me will be the function of creation. It comes from the fact that a large number of state bodies are subject to the Sejm. Often the legislator in the legal basis of various services contained provisions relating directly to the Chairman of the Chamber of Deputies. An example confirming the validity of my words is the law of 13 April 2007 on the State Labour Inspectorate, which states in fact a number of independent competences

⁹⁰ Act from 1.08.1997 on the Constitutional Tribunal, Dziennik Ustaw [Journal of Laws] No. 102, item 643 with amendments.

⁹¹ Ibidem.

⁹² Zubik, *supra* note 1, p. 107.

⁹³ Ibidem, p. 107.

of the Marshal of the Sejm in relation to it. The Marshal received through the Law on the State Labour Inspectorate many legislative, organisational, and creational powers. What may seem to be quite interesting is that the law does not give him any supervisory powers⁹⁴. By virtue of Article 5 section 1 point 2 of the Law on State Sanitary Inspection, the Marshal of the Sejm by way of statute establishes the National Labour Inspectorate. Similarly on the basis of paragraph 2 the Chairman of the Chamber determines the territorial scope of Regional Labour Inspectorates and defines the pattern for identity cards for the staff of the inspectorate⁹⁵. The Supreme Chamber of Control, similarly to the State Labour Inspection is subject to Parliament and on this occasion it is worth mentioning that it has a dual legal basis, because in addition to the Act on the Supreme Chamber of Control it also has a legal basis in the Constitution. The Marshal of the Sejm as a constitutional body may order the Supreme Chamber of Control on the basis of Article 6 paragraph 1 of the Act on the Supreme Chamber of Control to start a control. He is also the entity that may apply to the high chamber to elect a particular person as the President of the Supreme Chamber of Control, which is regulated in Article 14 of the Act on the Supreme Chamber of Control⁹⁶. Another statutory competence of the Marshal of the Sejm will be to consent to the dismissal of the director-general of the Supreme Chamber of Control or to the appointment or dismissal of the seventeen members of the college of the Supreme Chamber of Control⁹⁷. Under the power of the above Act the Marshal has the obligation to publish in the "Polish Monitor" the rules and procedures for appointment of members of the disciplinary commission and speakers on duty⁹⁸. The Marshal of the Sejm may also nominate a candidate for the post of Ombudsman and he is entitled to request the Ombudsman's dismissal, which is stated in the law on the Ombudsman in Article 3

⁹⁴ Ibidem, p. 117.

⁹⁵ Act from 13.04.2007 on the State Labour Inspectorate, Dziennik Ustaw [Journal of Laws] 2007, No. 124, item 1362 with amendments.

⁹⁶ Act from 22.01.2010 on the Supreme Chamber of Control, Dziennik Ustaw [Journal of Laws] 2010, No. 134, item 132 with amendments.

⁹⁷ Ibidem.

⁹⁸ Zubik, supra note 1, p. 119.

section 1⁹⁹. The Marshal of the Sejm is also the only addressee of the Article 8 paragraph 2 of the Law on the Ombudsman, which stipulates that “the Marshal of the Sejm is the only entity authorised to request the Ombudsman’s dismissal”¹⁰⁰. The Marshal also gives the statute of the Ombudsman Office setting out the responsibilities and organisation of the Office of the Ombudsman and at the request of the organ, the Marshal may appoint up to three Deputy Ombudsmen¹⁰¹. According to the regulations of the Law on the Ombudsman for Children, the Marshal of the Sejm may propose a candidate for the post of Ombudsman for Children, this is covered in Article 4 paragraph 1 of the Law on the Ombudsman for Children, in the same way as with the Ombudsman, he may also submit a request for the dismissal of the Ombudsman for Children. Other powers over the Children’s Ombudsman are identical to the provisions concerning the Ombudsman.

The law on the protection of classified information, states that the Marshal of the Sejm in relation to a person being a candidate, the property of which the election right is by the Parliament, makes a request to the relevant department of state protection to carry out a screening of the candidate which is constituted in Article 27 section 1 of that Act. This regulation is specifically addressed to: the President of the Polish National Bank, the President of the Supreme Chamber of Control, the Ombudsman, the Inspector General for Personal Data, the Commissioner of Public Interest, the three members of the Monetary Policy Council, four members of the National Broadcasting Council, the President of the Institute of National Remembrance, and the Head of the Chancellery of the Sejm¹⁰². The President of the Republic, in the event of using the Armed Forces outside the country, is to immediately notify the Marshal of the Sejm of such a fact. The same action should be taken by the Minister responsible for defence in the event of approving the stationing of foreign troops on the territory of Poland¹⁰³.

⁹⁹ Act from 20.05.2003 on the Ombudsman, *Dziennik Ustaw* [Journal of Laws] No. 321, item 823 with amendments.

¹⁰⁰ *Ibidem*.

¹⁰¹ Cf. Act from 20.05.2003 on the Ombudsman, *Dziennik Ustaw* [Journal of Laws] No. 321, item 823 with amendments.

¹⁰² Zubik, *supra* note 1, p. 121.

¹⁰³ *Ibidem*, p. 122.

The new Electoral Code requires the Chairman of the National Electoral Commission to immediately notify the Marshal of the results of elections and not more than fourteen days later publish a notice of the election results¹⁰⁴. The extra-parliamentary powers of the Marshal of the Sejm can be found also in the Law on the State Tribunal. The Constitution exhaustively lists a catalogue of bodies that are accountable to the Tribunal of State, and the Chairman of the Chamber is obliged to accept such requests. If the application concerns the accountability of the President of the Republic, as I have already mentioned, the Marshal then acts as Chairman of the National Assembly¹⁰⁵. The President of the Constitutional Tribunal on the basis of Article 11 paragraph 4 of the Law on the Constitutional Tribunal, gives the Marshal the decision or resolution of the General Assembly of Judges of the Constitutional Tribunal as to the expiry of the mandate of a judge of the Constitutional Tribunal¹⁰⁶. At this point the procedure is launched, supervised by the Marshal of the Sejm, of appointing of a new person to the post of judge of the Constitutional Tribunal. This is a kind of manifestation of representing the Parliament on the outside¹⁰⁷. Under the provisions of the Public Finance Act the Marshal of the Sejm presents to the President of Poland the candidates for the adjudicating commission in cases concerning a violation of public finance discipline. In addition, under the provisions of the same Act, the President of the Republic of Poland is obliged to establish, together with the Chairman of the Chamber of Deputies, the content of the regulation which will set rules and procedures of functioning of the commission¹⁰⁸. As part of the responsibility for the supervision and discipline of clerks by the Chairman of the Chamber, disciplinary commissions of second instance for employees are established for: the Chancellery of the Sejm, the State Labour Inspectorate, the National Electoral Office, the Office of Inspector General for Personal Data Protection, and the Institute of National Remembrance¹⁰⁹.

¹⁰⁴ Act from 26.05.2010 the Electoral Code, *Dziennik Ustaw* [Journal of Laws] No. 543, item 68.

¹⁰⁵ Zubik, *supra* note 1, p. 129.

¹⁰⁶ Act from 1.08.1997 on the Constitutional Tribunal, *Dziennik Ustaw* [Journal of Laws] No. 102, item 643 with amendments.

¹⁰⁷ Zubik, *supra* note 1, p. 129.

¹⁰⁸ *Ibidem*, p. 130.

¹⁰⁹ *Ibidem*.

It is also worth looking at the competence of the Marshal of the Sejm for the promulgation of normative acts. According to the Law on normative acts, provisions of the Chairman of the Chamber are published in the “Polish Monitor”, which is mentioned in Article 10 paragraph 3 of the Law on Promulgation of normative acts¹¹⁰. The Marshal’s statutory obligation is to issue unified texts of Acts, if the number of changes in the Act is significant, and if as well the original text of the Act was amended on several occasions. The decision to issue the consolidated text of the law in principle is the responsibility of the Marshal, it may happen that the amendment would in itself contain the date of announcement of the consolidated text, the Marshal will then be obliged to issue a consolidated text no later than 14 days from the date of its entry into force. The Act also imposes the duty of cooperating with the Marshal of the Government Legislation Centre, which deals with the publication of normative acts issued by the government. It is not fully clear to what extent such a norm providing for the cooperation of the Marshal with the Government Legislation Centre is in line with the principle of separation of powers¹¹¹.

10. COMPARATIVE ANALYSIS OF THE OFFICE OF THE MARSHAL USING THE EXAMPLE OF THE SPEAKER OF THE HOUSE OF COMMONS

Starting the considerations at this point one should mention the fact that in Poland there is civil law, and therefore, the first body above has certain characteristics of this legal system. In order to better illustrate the above institution of constitutional law, we decided to show it in legal comparative terms using the example of the Speaker of the House of Commons of the British Parliament. This office is deeply rooted in Anglo-Saxon legal doctrine.

The Speaker of the House of Commons is a member of the British House of Commons and chairman of the meetings. One should not confuse this function with another with a similar name, but a different nature and role – the Chairman of the House of Commons. The Speaker has very wide

¹¹⁰ Act from 20.07.2000 on announcing of normative acts and some other legal acts, Dziennik Ustaw [Journal of Laws] No. 250, item 1606.

¹¹¹ Zubik, *supra* note 1, p. 132.

powers to control the course of the meeting. The Speaker is usually elected by the Chamber at its first meeting after the elections, and this is the first decision of the Chamber in the new term. Until the election, the session of the Chamber is directed by the Father of the House, who is the member with the longest uninterrupted seniority, unless he is a member of the government. The Speaker in fulfilling his function is required to maintain total impartiality and not be politically active, and thus from the time of taking office his membership of a political party is considered finished. Because being apolitical and not participating in current affairs does not gain popularity among voters, traditionally none of the three major parties gives rivals against the Speaker of the past term in his voting area. Traditionally, Speakers exercise their function until they, themselves give it up. If the Speaker is willing to stay in office and there are no serious objections to him, he is usually re-elected by acclamation. The moment just before he is chosen is the only time when he has the right to give a speech of a political nature (most often used to thank his own voters. The Speaker takes place on top of the rectangle shaped meeting chamber. To his right sits the ruling party and the left (in front of the government) the opposition¹¹².

In conducting the meetings it should be noted that during them the deputies have the right to speak only after being called by the Speaker, to whom they also turn while speaking (it is prohibited to refer to other parliamentarians other than in the third person). The Speaker has the right to remove a deputy from the meeting room, who disrupts or ignores his orders, but the prohibition on participating in the deliberations is only valid until the end of the day. Longer suspension requires the approval of the Chamber. In extreme cases of disorder in the room, the Speaker may at any time interrupt the meeting. He also has the right to limit the length of time and to order members (including members of the government, and even the Prime Minister) to immediately end a speech. Owing to the fact that the British Parliament usually applies strict party discipline, the majority of the voting is as follows: the Speaker asks a question on the voted subject, and the members of parliament (all at once) express loudly

¹¹² P. Sarnecki, *Ustroje konstytucyjne państw współczesnych* [Constitutional Systems of Contemporary States], Warszawa 2008, p. 31 et seq.

their view¹¹³. Typically, all MPs of the ruling party vote the same (applies also to the opposition), and because the first are in majority, the Speaker recognises the votes of the majority for the government. Each deputy may, however, request a secret ballot, and the Speaker should accede to this request, if it is not, in his opinion, an attempt to unnecessarily prolong the proceedings¹¹⁴.

In extraordinary situations, at the request of the government, the Speaker may order deputies to come to London for a meeting, despite ongoing parliamentary recesses. The Speaker also announces a by-election in the event of seats becoming vacant in mid-term and decides whether to grant the status of budgetary law (money bill), which means a slightly different legislative path (the mainly smaller role of the House of Lords). He is also head of administration of Parliament and the employed civil servants. By office he is chairman of the commission that determines changes in the boundaries of electoral districts¹¹⁵.

Like all MPs, he has the right to intervene in the interest of voters in his district, but with the proviso that he cannot speak on these issues in the House (he may speak only on matters related to the obligations of the Speaker). The Speaker has three hierarchically ordered deputies. The most important of them is entitled to the, today, historic title Chairman of the Ways and Means (Committee). The two others have the titles of the First and Second Deputy Chairman of the Committee. Chairing the debate, the deputies have powers equal to the Speaker. To them there also applies the requirement of impartiality, but they may be rather more involved in current politics than the Speaker, because – unlike him – they must stand for election in accordance with normal rules. In practice, the Speaker chairs meetings for approx. 3 hours a day, and the rest of the time his deputies do so. The Speaker ranks first among the secular state dignitaries outside the Royal Family. In addition to the normal parliamentary salary, he is entitled to a salary equal to the members of the cabinet. He also has a business suite

¹¹³ O. Majkowska, *Pozycja parlamentu brytyjskiego w świetle działania systemu dwupartyjnego* [*Position of the British Parliament under the Action of the Two-Party System*], Katowice 2008, p. 127 et seq.

¹¹⁴ P. Cowley, M. Stuart, *Parliament: More Revolts, More Reform*, Parliamentary Affairs 2003, no. 2 (56), pp. 198-201.

¹¹⁵ Majkowska, supra note 113, p. 128 et seq.

in the Westminster Palace. Traditionally immediately after the election, the speaker is appointed to the Privy Council, and after leaving office he does not become again an ordinary deputy, but receives a peerage and a lifelong place in the House of Lords¹¹⁶.

Summing up the above it should be noted that depending on the context of the legal institution of the Marshal of different legal systems realise the vast majority of the same functions of government. Here in particular we refer to duties related to conducting meetings, the method of election of the Marshal, or finally the status that is granted at the moment of election.

ENDING

The strong position of the Marshal of the Sejm is undoubtedly a tradition stemming from the March Constitution. Based on its provisions the Marshal has obtained a number of rights and obligations, which have given him just such a position in the state. Most of them have remained unchanged to present day. The legal structure of the Republic of Poland does not provide for the position of vice president, hence also the legislator adopted a solution which is that the person who will be called Marshal of the Sejm becomes the second person in the country, and has the responsibility of guaranteeing the continuity of fulfilling the duties of head of state. The intention of the legislator distinguishes, the constitutional body which I have described from among other organs of the Polish state. Speaking of the Marshal of the Sejm, we cannot be guided only by his constitutional powers. The Marshal of the Sejm is a key figure in the chamber. He holds legal instruments that influence the activities and the image of the entire Parliament. This is a very important form of legal and political life. When analysing the problem of representation of the Marshal of the Sejm the lack of regulation may be surprising in this case. Since the legislature has granted so many rights and duties to the office of Marshal giving him so much responsibility, then why did it not create clear and transparent conditions for the representation of that body? In today's world

¹¹⁶ Sarnecki, *supra* note 112, p. 31 et seq.

the political neutrality of the Marshal of the Sejm seems to be illusory. The modern office, in our view, requires from the Marshal largely independence, charisma, the ability to conclude a compromise in an assertive way, as well as to demonstrate the candidate's high responsibility, both moral and legal, in holding the office. Let's consider how many people who have held the office used the above set of features? At present the legal powers of the Marshal of the Sejm are not directly proportional to the actual impact on state policy. Despite his position and his status as the second person in the country, he actually has less impact than the Prime Minister and other top officials of the state. An unusual practice is also the lack of a consolidating act compiling all of his rights and obligations. But on the other hand one could raise the argument that, because of the multitude of regulations regarding the Marshal of the Sejm, they could not be contained in a single act. The legislator should ensure that the Marshal's rank is as high as corresponds to his legal powers.

In conclusion, the Marshal of the Sejm is one of the most important organs in the Republic of Poland. He has numerous functions relating to his work inside the chamber and extra-parliamentary powers regarding his work in the social, political, and constitutional field. The Office of the Marshal should focus around it all political options to ensure the required seriousness and dignity of the place which undoubtedly is the Sejm. Owing to the absence of terms of office, the Marshal cannot feel too confident in his position, which we believe provides a better quality of the work performed by him.

